

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT PIERCE DIVISION**

CASE NO. 23-14197-CIV-CANNON-McCabe

NELSON HENRY,

Plaintiff,

v.

JOSEPH IANNONE, et al.,

Defendants.

/

**ORDER ACCEPTING MAGISTRATE JUDGE'S REPORT AND
RECOMMENDATION; DENYING DEFENDANTS' MOTION TO DISMISS; AND
ORDERING DEFENDANTS TO RESPOND TO AMENDED COMPLAINT**

THIS CAUSE comes before the Court upon Magistrate Judge McCabe's Report and Recommendation on Defendants' Motion to Dismiss Plaintiff's Initial Complaint (the "Report") [ECF No. 28], filed on November 8, 2023. Upon review, the Report is **ACCEPTED** [ECF No. 28]; Defendants' Motion to Dismiss [ECF No. 24] is **DENIED WITHOUT PREJUDICE**; and Defendant shall answer or respond to Plaintiff's Amended Complaint [ECF No. 7] on or before **December 5, 2023**.

BACKGROUND

On October 26, 2023, following referral, Magistrate Judge Ryon M. McCabe issued a Report recommending the Court deny Defendant's Motion to Dismiss the Initial Complaint and permit Defendant an opportunity to respond to Plaintiff's Amended Complaint [ECF No. 28 pp. 2–3]. Objections to the Report were due on November 15, 2023 [ECF No. 28 p. 3]. No party has filed objections, and the time to do so has expired.

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LEGAL STANDARDS

To challenge the findings and recommendations of a magistrate judge, a party must file specific written objections identifying the portions of the proposed findings and recommendation to which objection is made. *See Fed. R. Civ. P.* 72(b)(3); *Heath v. Jones*, 863 F.2d 815, 822 (11th Cir. 1989); *Macort v. Prem, Inc.*, 208 F. App'x 781, 784 (11th Cir. 2006). A district court reviews de novo those portions of the report to which objection is made and may accept, reject, or modify in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. § 636(b)(1). To the extent a party fails to object to parts of the magistrate judge's report, the Court may accept the recommendation so long as there is no clear error on the face of the record. *Macort*, 208 F. App'x at 784. Legal conclusions are reviewed de novo, even in the absence of an objection. *See LeCroy v. McNeil*, 397 F. App'x 554, 556 (11th Cir. 2010); *Cooper-Houston v. S. Ry. Co.*, 37 F.3d 603, 604 (11th Cir. 1994).

DISCUSSION AND CONCLUSION

Following review, the Court finds no clear error in the Report. Accordingly, it is hereby

ORDERED AND ADJUDGED as follows:

1. The Report and Recommendation [ECF No. 28] is **ACCEPTED**.
2. Defendant's Motion [ECF No. 24] is **DENIED WITHOUT PREJUDICE** in accordance with this Order.
3. Plaintiff's Amended Complaint [ECF No. 7] is deemed the operative complaint in this matter.
4. **On or before December 1, 2023**, Defendants shall respond to or answer Plaintiff's Amended Complaint [ECF No. 7].

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DONE AND ORDERED in Chambers at Fort Pierce, Florida, this 21st day of November 2023.



AILEEN M. CANNON
UNITED STATES DISTRICT JUDGE

cc: counsel of record